

HFS 45.04 Operational requirements.

(1) TERMS OF LICENSE.

(a) The number of children in the care of a family child care center at any time may not exceed the number for which the center is licensed.

Licensed capacity may not be exceeded at any time. If a center over-enrolls on the basis of an absentee rate or has an occasional drop-in, the center must be sure that over-enrollment will not result in the center being over capacity.

(b) The age of children served by a center may not be younger or older than the age range specified in the license issued.

A license may be granted for the care of children through age 17. If a provider wishes to care for a child above or below the specified age on the license, an exception should be requested. For example, a provider who is licensed up to age 12 and wishes to care for one child age 14. The exception must be granted prior to caring for a child above or below the ages specified on the license.

If a provider wishes to be licensed to care for children aged 2 and above, and has his/her own child under age 2, an exception to the age range of the license may be granted with the condition that all the licensing rules for children under age 2 apply except for the requirement for I/T training. See commentary under HFS 45.09(1)(b)2.

(c) The hours, days and months of a center's operation may not exceed those specified in the license.

A provider may care for 3 or fewer unrelated children under age 7 outside of licensed hours.

(2) ADMINISTRATION. A licensee shall do all of the following:

(a) Comply with all laws governing the facility and its operation.

ZONING: S. 66.34 of Wis. Stats defines a family child care home as a "dwelling licensed as a child care center by the department of health and family services under s. 48.65 where is care is provided for not more than 8 children." The statute then states in pertinent part that "No municipality may prevent a family child care home from being located in a zoned district in which a single family home is a permitted use. No municipality may establish standards or requirements for family child care homes difference from the licensing standards established under s. 48.65. This subsection does not prevent a municipality from applying to a family child care home the zoning regulations applicable to other dwellings in the zoning district in which it is located." This law gives a municipality the power to prevent a family child care center that is not used as a residence from being located in a district zoned for residential use unless the licensee is granted a conditional use permit. Some municipalities may also require that any home-based business have a conditional use permit to operate. This is also permitted under the law.

(b) Comply with all requirements in this chapter.

(c) Ensure that all information provided to the department is current and accurate.

(d) Prior to receiving or continuing a license, complete all application forms and pay all fees and forfeitures due to the department.

45.04(2)(d)Note:

Note: The Department will provide an application after a Department representative completes the provision of pre-licensing technical assistance.

(e) Develop, submit to the department for compliance review, implement and provide to the parents written policies and procedures related to all of the following:

A Family Child Care Policy Sample is available from the Child Care Information Center (CCIC) website <http://www.dpi.state.wi.us/ccic/ccicres.html>. A completed CFS-2356, Policy Checklist - Family Child Care Centers, shall be submitted with the copy of the current policy. It is the licensee's responsibility to ensure the department has the most current copy of the center's policies that reflect current practices.

Current written policies and procedures that reflect current practices must be provided to the parents of enrolled children.

Contracts are recommended but not required.

1. Enrollment and discharge of enrolled children.
2. Fee payment and refunds.
3. Child and provider absences.

The center must have a procedure for notifying parents if a scheduled child does not attend. The procedure must be included in the child and provider absence policy.

4. Children's and staff's health care, including those policies and procedures pertaining to SIDS risk reduction, if the center is licensed to care for children under one year of age.

5. Nutrition.
6. Daily activities of the children.
7. Child guidance.
8. Transportation of children.

The policy must contain a procedure for ensuring that children are accounted for at all times and are not left unattended in a vehicle during transportation.

9. Religious instruction or practices, if any.

10. Information related to the numbers, types and location of pets or other animals located on the premises of the center and the type of access the children will have to the pets.

Note: Under the state public accommodation law, s. 106.04, Stats., federal law and regulations related to use of federal funding, and some local anti-discrimination ordinances, denying admission on the basis of race, handicap, religion or certain other characteristics may be illegal.

(f) Develop, submit to the department for approval and implement a written orientation plan for any employees, substitutes and emergency back-up providers. The orientation plan shall cover all the items described in s. HFS 45.05(2)(a) and (b).

45.04(2)(f)Note:

Note: See s. HFS 45.05(2)(a) and (b) regarding providing an orientation to employees, substitutes and emergency back-up providers.

(g) Provide written information to parents on whether a licensee has insurance coverage on the premises, on the child care operation and on vehicles when transportation is provided. Liability insurance is required if cats or dogs are allowed in areas accessible to children during the hours of operation as specified in s. HFS 45.07(7)(h).

Amounts of coverage need not be included.

If cats or dogs are accessible to the children, current verification of pet liability coverage must be on file (such as certificate of insurance, declaration page, letter from insurance agent with policy dates, etc.). If dogs and cats are not accessible to children, insurance is not required. See HFS 45.07(7)(h).

Licensees should also be advised that homeowner's insurance may not provide liability coverage for child care children unless specifically mentioned as a rider to the policy. Some riders provide coverage for up to 6 children only. These riders are not acceptable if proof of insurance is required under 45.07(7)(h) unless the coverage is the same as the licensed capacity. The insurance coverage must state that the number of children for whom coverage is provided is at least the maximum licensed capacity of the center. (For example, if a rider indicates coverage is provided for 6 children, the center must either reduce their licensed capacity to 6 children or obtain insurance that specifies coverage for 8 children.) Questions about insurance should be referred to qualified insurance professionals.

(h) Display the child care license in a location where parents can see it during the hours of operation.

(i) Post next to the child care license the results of the most recent licensing inspection, any notice of enforcement action and any stipulations, conditions, exceptions or exemptions that affect the license. Items posted shall be visible to parents.

The CFS-294 Non-Compliance Statement & Correction Plan must remain posted until the next CFS-294 or CFS-785 Compliance Statement is issued.

Enforcement actions include, but are not limited to, orders, forfeitures, notices of revocation, non-renewals and summary suspensions.

(j) Ensure that any action, by commission or omission, or any condition or occurrence relating to the operation or maintenance of the child care center does not adversely affect the health, safety or welfare of any child under the care of the licensee.

(k) Meet, upon request of the department, with a licensing representative on matters pertaining to the license.

(3) REPORTS. The licensee shall report to the department all of the following:

The licensing rules spell out what must be reported to the department and the time frames for making those reports. Unless indicated in the rules, the reports do not need to be made in writing; however, written documentation is recommended. The licensing specialist will review any report made and may conduct a follow-up investigation to determine whether licensing violations have occurred or a situation exists that has the potential to cause harm to a child.

45.04(3) continued

Follow-up investigation may involve a site visit, a review of additional documentation submitted by the licensee, a review of police reports or county investigations or interviews with staff members or parents. After completing any necessary investigation, the licensing specialist will indicate the results of the investigation in the licensing checklist and issue a statement of non-compliance if a violation occurred. Additional enforcement action may be taken after consultation with the licensing chief or supervisor.

(a) Any death of a child in care or accident that results in an injury that requires professional medical treatment while the child is in the care of the center, within 48 hours after the occurrence.

Note: The licensee may use either the Department's form CFS-0055, Child Care Accident/Death Report, listed in Appendix E, or the licensee's own form to report accidents and deaths.

"Professional medical treatment" means treatment by a health care professional such as, but not limited to, a physician, physician assistant, dentist, nurse, etc. An initial report must be made within 48 hours. It may be made by telephone, e-mail, fax or in person. Submission of a written accident report to the regional office is recommended.

(b) Any damage to the premises that may affect compliance with this chapter, within 24 hours after the occurrence.

This includes report of fires that require the services of the fire department and other disasters such as boiler explosions, flooding, tornadoes, roof collapse, etc.

(c) Any construction or remodeling on the premises that has the potential to affect an area accessible to children or a condition of the license. Notification shall be provided in writing before the construction or remodeling begins.

Note: See s. HFS 45.11(6)(a) for items that affect a condition of the license.

Note: It is recommended that the licensee check with the local municipality to determine whether a building permit is required before beginning any construction or remodeling.

(d) If requested by the department, a plan of correction for cited violations of this chapter or ch 48, Stats., in a format specified by the department. The department shall receive the plan of correction by the date the department specifies and be approved by the department licensing representative.

Note: The licensing representative will notify the licensee that a plan of correction will be required and will provide the plan of correction format with the notification.

(e) Any known convictions, pending charges or other offenses of the licensee, a provider, household members or other persons subject to a caregiver background check which could potentially relate to the care of children at the center or activities of the center.

See Appendix T, PFS-3064 Requirements for Caregiver Background Checks for Child Care Centers, for more information.

(f) Any incident related to a child who leaves the premises of the center without the knowledge of a provider or any incident that results in a provider not knowing the whereabouts of a child in attendance at the center within 24 hours of the incident.

45.04(3)(g)

(g) Any incident involving law enforcement within 24 hours after the occurrence that:

1. Involves a licensee, a household resident or an employee of the center in an incident that causes, or threatens to cause, physical or serious emotional harm to an individual, including a child in the care of the center.

2. Involves any traffic-related incident where a person responsible for the violation transports children in the care of the center.

(h) Any change in room usage, such as using rooms not previously approved for use at least 20 working days prior to the change. Changes in room usage shall be approved by the department prior to the change.

(i) Any suspected abuse or neglect of a child by a provider, volunteer or household member that was reported under sub. (8)(a) or any inappropriate discipline of a child by a provider, volunteer or household member during the child's hours of attendance within 24 hours after the incident.

Note: See also s. HFS 45.07(2) for information on guiding children's behavior and sub. (6)(c) regarding recording injuries in a center medical log.

(j) A change in transportation services at least 5 calendar days prior to the change. A change in transportation services shall be approved by the department. Seasonal closing shall be reported at least 5 calendar days prior to the closing.

An example of "seasonal closing" is a program that decides to close for the summer.

(k) Statistical data required by the department on forms provided by the department.

Note: The Department periodically requests statistical data from licensees. An example of the type of data collected relates to the immunization status of children in care. When the Department requests statistical data, the Department will supply the appropriate form.

(4) PARENTS.

(a) The center shall permit parents to visit and observe the center's operations at any time during the center's hours of operation unless parental access is prohibited or restricted by court order.

The provider may lock the door for security.

When access is prohibited or restricted by court order, permission to call for the child is also affected. A copy of the court order must be on file at the center. Policies should include notification to parents that they are permitted to visit and observe during hours of operation. Refer also to 45.04(7)(b)2. Further information about parental rights to children's records may be obtained from www.legalexplorer.com.

(b) The licensee shall give parents of each enrolled child a summary of this chapter.

Note: Copies of a summary of this chapter may be obtained from the Child Care Information Center by calling 1-800-362-7353.

(5) STAFF RECORDS. The licensee shall maintain a file for each provider, employee, or substitute. The file shall contain the following items:

45.04(5)(a)

- (a) A completed staff record form provided by the department.

If the licensee is a provider, a file is required.

Note: The Department's form CFS-0053, Child Care Staff Record, is used for recording staff information. Information on how to obtain the form is in Appendix E.

- (b) A completed background information disclosure form provided by the department that does not reveal any information that may preclude the person's contact with children under s. 48.685, Stats., or ch. HFS 12 prior to the first day of work and every 4 years thereafter.

Note: The Department's form HFS-64, Background Information Disclosure, is used for reporting employee background information. Information on how to obtain the form is in Appendix E.

- (c) The results of the complete caregiver background check including any report of any investigation required under ch. HFS 12 within 60 days after hire and every 4 years thereafter.

Note: If the licensee is a provider, the department is responsible for collecting the completed Background Information Disclosure form and conducting the necessary caregiver background check on the licensee.

Refer to Appendix H, Chapter HFS 12 Caregiver Background Checks, and Appendix T, PFS-3064 Requirements for Caregiver Background Checks for Child Care Centers.

- (d) Documentation of the days and hours a substitute, employee or volunteer has worked and whose time is used to meet the applicable staff to child ratio under Table 45.05.

- (e) Except as provided under par. (f), a physical examination report on a form provided by the department that was completed within 12 months prior to or 30 days after the person became licensed or began working with children. The report shall be dated and signed by a licensed physician, physician's assistant or HealthCheck provider. The report shall indicate all of the following:

1. That the person is free from illness detrimental to children, including tuberculosis.
2. That the person is physically able to work with young children.

Physical examinations may be signed by medical (M.D.), osteopathic (D.O.) or HealthCheck Providers as listed below. Chiropractors are prohibited by statute from giving physical examinations unless they are an M.D. or D.O.

An initial physical exam and TB test is required. Subsequent physical exams and TB tests are not required.

Per the Division of Public Health, if the TB skin test is positive, the person shall be evaluated by a physician. This evaluation must conclude that the person does not have active TB in order for the person to continue in employment.

See HFS 45.02(14) for definition of HealthCheck Provider.

The professional identification of the person signing the form should be clearly stated on the form, i.e., M.D., R.N., P.A., etc.

The professional affiliation should also be stated if other than an M.D. or P.A. working under the supervision of an M.D.

45.04(5)(e)2.Note:

Note: The Department's form CFS-0054, Child Care Provider Staff Health Report, is used for recording physical examination information. Information on how to obtain the form is in Appendix E.

(f) The health examination requirement under par. (e) does not apply to a provider who requests an exemption from par. (e) based on the provider's adherence to religious belief in exclusive use of prayer or spiritual means for healing in accordance with a bona fide religious sect or denomination.

According to the "Christian Science Committee on Publications for Wisconsin" the Christian Science faith is the only religion that qualifies under this exemption. Evidence of exemption is presented through a Christian Science form entitled "Application for Exemption from Physical Examinations and Immunization."

(g) Documentation of the entry level training required under s. HFS 45.05(1)(b) or s. HFS 45.09(1)(b) and any continuing education required under s. HFS 45.05(1)(b).

Note: "The Registry" is the organization that provides professional development opportunities and awards credentials for early childhood professionals in Wisconsin. A certificate issued by the Registry may be used to document completion of entry level training. Contact the Registry at 608-222-1123 for information on how to obtain a Registry certificate.

(6) CHILDREN'S RECORDS.

(a) The licensee shall maintain a current written record at the center on each child enrolled and shall make the record available to the department representative on request. Each record shall include all of the following:

The provider's own child(ren) under age 7 must have a file containing all the required elements.

Administrative rules do not relate to the office management or record keeping techniques of a center. Required records must be maintained for the length of time the child is enrolled, be on the premises for children in care and be available to the licensing specialist for review. A file or folder is not required; however, all records relating to one child should be kept together in one place.

It is recommended that the center retain records for 3 years after a child is discharged.

1. Enrollment information and health history on a form provided by the department. The enrollment information and health history shall be on file prior to the child's first day of attendance.

Note: The Department's form CFS-0062 or CFS-0062A, Child Care Enrollment Form and the CFS 2345 Health History and Emergency Care Plan Form are used for recording enrollment and health history information. Information on how to obtain the forms is in Appendix E. See s. HFS 45.07(6)(L)5. for information on sharing information related to a child's special health care needs.

Enrollment information should include both parents if applicable. If parental access is limited by a court order, a current copy of the court order must be on file at the center.

2. Parental authorization for the child to participate in and be transported for field trips and other activities if these are part of the program.

Note: The Department's form CFS-0062, Child Care Enrollment Form, includes a blanket authorization to take children on field trips. The Department's form CFS-0058 or CFS-0058A, Day Care Field Trip or Other Activity Notification, or another type of notification such as a note to a parent may be used to provide specific information about a field trip. Information on how to obtain the Department's forms is in Appendix E.

45.04(6)(a)3.

3. A written agreement, signed by the parent, outlining the plan for a school-age child to come to the center from school, home and other activities and to go from the center to school, home and other activities.

CFS 104 School-Age Agreement – Child Care Centers may be used for this purpose and for allowing a child to walk to and from another activity. The provider should plan for situations when a child fails to arrive as scheduled from school or another activity. This form may also be used for non-school-age children for release to a specific activity or to an individual not listed on the enrollment form.

Note: The licensee may use either the Department's form CFS-0104, Day Care School-Age Agreement, or the licensee's own form for securing the parent's signed agreement. Information on how to obtain the Department's form is in Appendix E.

4. Documentation of each child's immunization history and, except for a school-aged child, the most recent physical examination.

For the provider's own children under age 7 years, a physical exam and immunization history must be on file. For provider's own children age 7 years and older, a physical exam is not required. The Department's form DPH-4192 or DPH-4192S, Day Care Immunization Record, may be used to record immunizations. An electronic printout from the Wisconsin Immunization Registry or other registry maintained by a health care provider may be used in place of DPH-4192 or DPH-4192S.

5. Written permission from the parents under s. HFS 45.07(6)(k) for medical attention to be sought for the child if the child is injured.

6. For an infant or toddler, a current statement from the parent on a form provided by the department about the infant or toddler's habits of eating, sleeping, toileting and communication, and specific techniques that appear to comfort the child.

See 45.09(1)(c)1.

Note: The Department's form CFS-0061, Child Care Intake for Child Under 2 Years is used for recording the infant's or toddler's habits. Information on how to obtain the form is in Appendix E.

(b) The licensee shall maintain a written record of the daily attendance that includes the time of arrival and departure and birthdate for each child for the length of time the child is enrolled in the program.

"Daily attendance" means the actual arrival and departure of each child every day and must include each time a child is checked in to and out of care at the facility throughout the day (e.g., preschool, swim lesson, etc.).

(c) The licensee shall maintain a medical log book with pages that are lined and numbered and a stitched binding. A provider shall record in ink any injuries received by a child, evidence of unusual bruises, contusions, lacerations or burns received by a child in or out of center care or medication dispensed to a child in the medical log and sign or initial each entry. Pages may not be removed or lines skipped.

Not every injury will be apparent immediately. A good rule of thumb is to record every injury that leaves a mark or has the potential to leave a mark (e.g., a child bumps her head and no mark or bump is readily apparent but there is the potential for a mark, bump or bruise to develop; this accident should be recorded.). See Appendix J for directions for the use of a medication and injury log book.

45.04(6)(c)Note:

Note: Licensees may obtain information about maintaining a medical log book by contacting the Child Care Information Center at phone number 800-362-7353.

Note: See sub. (8) of this section for requirements related to reporting suspected child abuse or neglect, and s. HFS 45.07(6)(b)2. for information on recording in the medical log book.

(7) CONFIDENTIALITY.

(a) The licensee is responsible for compliance by the center with s. 48.78, Stats., and this subsection.

(b) The licensee shall ensure that all of the following occur:

1. Persons having access to children's records do not discuss or disclose personal information regarding the children and facts learned about the children and their relatives. This subdivision does not apply to any of the following:

a. The parent or person authorized in writing by the parent to receive the information.

b. Any agency assisting in planning for the child when informed written parental consent has been given.

c. Agencies authorized under s. 48.78, Stats.

A licensed child care facility may give access to confidential information regarding an individual in care to a social welfare or law enforcement agency or the Department of Health and Family Services. A social welfare agency is a county department of social or human services, an Indian tribal social service agency or agent or a licensed child welfare agency under contract with the county department. A law enforcement agency is a sheriff or police department.

2. A parent, upon request, has access to all records and reports maintained on his or her child.

Every parent has a right to their child's school, medical and dental records. The only exceptions to this rule are if a court specifically orders that a parent does not have access to the records or denies a parent any contact whatsoever with a child. A copy of the court order that limits the parent's access must be on file at the center.

3. All records required by the department under this chapter for licensing purposes are available to the licensing representative.

(8) REPORTING CHILD ABUSE.

(a) A licensee or provider who knows or has reasonable cause to suspect that a child has been abused or neglected as defined in ss. 48.02(1) and 48.981(1), Stats., shall immediately contact the county department of social services or human services or local law enforcement agency in compliance with s. 48.981, Stats.

To contact your county department of social services or human services look in your local telephone book under "government."

45.04(8)(b)

(b) The licensee shall document that each provider and substitute has received training at least every 2 years in all of the following:

1. Child abuse and neglect laws.
2. How to identify children who have been abused or neglected.
3. The procedure for ensuring that all known or suspected cases of child abuse or neglect are immediately reported to the proper authorities.

Review of the brochure PFS-101, It Shouldn't Hurt To Be a Child, is sufficient to meet the requirements for training in child abuse or neglect identification and reporting procedures (initial and date the brochure upon completion). Training may also involve local child protective services, local law enforcement agencies or other agencies that provide continuing education experiences.

Training may be counted as continuing education.

Note: Failure of the licensee to report known or suspected child abuse or neglect does not lessen the legal duty of a child care employee to report known or suspected cases of child abuse or neglect. Information related to child abuse may be obtained from the Child Care Information Center by calling 1-800-362-7353.

Note: See sub. (6)(c) of this section for information about logging evidence of unusual bruises, contusions, lacerations or burns received by a child in or out of center care in the center medical log book.